

IC 36-7-3

Chapter 3. Platting and Vacation of Real Property

IC 36-7-3-1

Application of chapter

Sec. 1. (a) Section 2 of this chapter applies only to areas subject to the jurisdiction of no plan commission under this article.

(b) Sections 3 through 9 of this chapter apply only to:

- (1) areas subject to the jurisdiction of an advisory plan commission under this article; and
- (2) areas subject to the jurisdiction of no plan commission under this article.

(c) Sections 10, 11, 14, and 16 of this chapter apply to all areas of the state, except that section 11 of this chapter applies only to areas subject to the jurisdiction of a plan commission under this article.

(d) Sections 12, 13, and 15 of this chapter apply to all areas of the state, except in a county having a consolidated city.

As added by Acts 1981, P.L.309, SEC.22. Amended by Acts 1981, P.L.46, SEC.5; P.L.220-1986, SEC.3.

IC 36-7-3-2

Subdivision of lots or lands outside boundaries of municipality; requisites, approval, and recording of plat

Sec. 2. (a) A person who lays out a subdivision of lots or lands outside the corporate boundaries of any municipality shall record a correct plat of the subdivision in the office of the recorder of the county before selling any lots in the subdivision. The plat must show public places, public ways, and the length, width, and size of each lot. Lots shown on the plat must be regularly numbered.

(b) The certificate of a registered land surveyor certifying the correctness of the plat must be attached to the plat. This certificate must include a description, by metes and bounds, of the location of the plat.

(c) Before offering a plat for record under this section, a person must acknowledge it before an officer authorized by law to take and certify acknowledgements of deeds. The officer shall then attach to the plat a certificate of the acknowledgment, which must be recorded with the plat.

(d) Before offering a plat for recording under this section, a person must file a copy of the plat in the county auditor's office and must submit the plat for the approval of the county executive. The county recorder may record the plat only if a certificate showing the approval of the county executive is attached to it. If the record of a plat is not executed and approved as required by this subsection, it is void.

As added by Acts 1981, P.L.309, SEC.22. Amended by P.L.104-1983, SEC.4; P.L.220-1986, SEC.4; P.L.23-1991, SEC.38.

IC 36-7-3-3

Laying out of town, addition to municipality, or subdivision of lots or lands within boundaries of municipality; requisites,

approval, and recording of plat; donations or grants to public

Sec. 3. (a) A person who lays out:

- (1) a town;
- (2) an addition to a municipality; or
- (3) a subdivision of lots or lands within the corporate boundaries of a municipality;

shall record a correct plat of the town, addition, or subdivision in the office of the recorder of the county before selling any lots in the town, addition, or subdivision. The plat must show public grounds, public ways, and the length, width, and size of each lot. Lots shown on the plat must be regularly numbered.

(b) Every donation or grant to the public, or to any person, that is noted as such on the plat, is considered a general warranty to the donee or grantee named on the plat, for the purposes intended by the donor or grantor.

(c) Before offering a plat for record under this section, a person must acknowledge it before an officer authorized by law to take and certify acknowledgments of deeds. The plat may be recorded only if it is made and acknowledged in the manner prescribed by this section.

(d) Before a person offers a plat for recording under this section, he must submit it for the approval of:

- (1) the advisory plan commission that has jurisdiction over the platted area under IC 36-7-4; or
- (2) the municipal works board, if no advisory plan commission has jurisdiction over the platted area under IC 36-7-4.

The advisory plan commission or works board shall approve or disapprove the plat, and may require the public ways shown in the plat to be as wide as, and coterminous with, the public ways in contiguous parts of the municipality. The county recorder may record the plat only if a certificate showing the approval of the plan commission or works board is attached to it. If the record of a plat is not executed and approved as required by this subsection, it is void.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-4

Survey and plat; order; adoption; resolutions; requisites

Sec. 4. (a) A municipality that does not have a sufficient survey and plat of its corporate territory may, by a resolution of its legislative body passed by a two-thirds (2/3) vote, order a survey and plat of the municipality. When the survey and plat have been made, the legislative body may adopt them by a resolution passed by three-fourths (3/4) vote (as described in IC 36-1-8-14). If a survey and plat of the municipality have already been made, without the order of the legislative body, it may adopt them by a resolution passed by a three-fourths (3/4) vote.

(b) The survey and plat are considered adopted by the municipality for all purposes if a certified copy of the resolution adopting the survey and plat is:

- (1) signed by the municipal executive and clerk;
- (2) attested by the seal of the municipality; and
- (3) recorded with the survey and plat in the office of the recorder of the county in which the municipality is located.

The copy of the resolution must include a statement of the names of the persons voting for and against it.

As added by Acts 1981, P.L.309, SEC.22. Amended by P.L.125-2001, SEC.4.

IC 36-7-3-5

Surveying, platting, and numbering of tracts of land in municipality; requisites, approval, and recording of plat; public ways

Sec. 5. (a) If there are five (5) or more specific tracts of land in a municipality that:

- (1) approximate in size any of the platted lots in the municipality;
- (2) are not platted or numbered; and
- (3) are near or contiguous to each other;

the municipal legislative body may cause the tracts to be surveyed, platted, and given a specific number on the plat. If the survey and plat are approved by the legislative body and recorded in the platbook records of the county in which the municipality is located, they have the same legal effect as if they had been made by the owners of the tracts under section 3 of this chapter.

(b) Tracts surveyed under this section may be described and conveyed by the numbers assigned to them, in the same manner as other platted lots. However, a new public way may be laid out or opened only with the written consent of the owner of the real property to be affected.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-6

Resolution declaring necessity of survey or plat; requisites; adoption procedures; direction to land surveyor

Sec. 6. (a) Before a survey of a municipality is made under this chapter, the municipal legislative body must declare, by resolution, the necessity for making the survey or plat. The resolution must describe and embrace all tracts to be included in the plat, with the description being by streets, alleys, corporate lines, other platted additions' lines, or any boundary line that can be definitely located. Notice of the adoption of the resolution must be given in accordance with IC 5-3-1. The notice must fix a time and a place where the persons owning the tracts may appear before the legislative body and object to any further steps being taken in the proceedings.

(b) If, after hearing any objections, the legislative body considers it necessary to proceed with the survey and plat, it shall direct the municipal civil engineer, if he is a land surveyor, or, if he is not, some suitable and competent land surveyor, to immediately make the survey and plat and report them to the legislative body.

As added by Acts 1981, P.L.309, SEC.22. Amended by Acts 1981, P.L.45, SEC.17.

IC 36-7-3-7

Land surveyor; completion of survey and plat; requirements; boundary line dispute procedures; subdivision of tracts; report;

statement of costs and expenses; filing

Sec. 7. (a) In making a survey of a municipality under this chapter, a land surveyor shall adhere as nearly as possible to boundary lines between tracts. If the owners of adjacent tracts do not agree on the location of the boundary line between them, the land surveyor shall give all interested parties ten (10) days' notice that, at a specified time, he will establish the boundary line. The line established is the correct boundary line, but an aggrieved party may appeal from the survey in the same manner as is provided by IC 36-2-12-14 for an appeal from a survey made by a county surveyor. However, an appeal does not delay the completion of the survey and plat.

(b) All public ways shall be preserved and properly designated on the plat.

(c) Each specific description shall be platted as one (1) lot and given a distinct number on the plat, except that where a part of the specific description is cut off by a street or alley, the tract may be given two (2) or more distinct numbers, as required by the situation.

(d) If any part of the entire tract to be platted is cut up into blocks by streets or alleys, the tract shall be platted in lots extending from the street or alley in the front to the alley in the rear.

(e) If a lot embraces more than one (1) specific description, the memoranda attached to the plat must designate how much of the lot belongs to each of the part owners.

(f) A person owning a tract that is within the boundaries of the territory to be platted and is larger than an ordinary lot may have that tract subdivided into lots of convenient size in the making of the plat.

(g) The land surveyor shall show on the plat the exact size and shape, the number, and the name of the owner (as determined from the records of the county), of each lot platted, and shall attach to the plat, as a part of it, a brief memorandum of the tract description of each lot platted.

(h) The land surveyor shall sign the plat and acknowledge its execution before an officer authorized to take the acknowledgment of deeds. When the survey and plat are completed, the land surveyor shall file them with the municipal clerk. The land surveyor shall also file with his report of the survey and plat an itemized statement of all costs and expenses incident to the proceedings, and an apportionment of the expenses to the lots platted, as required by section 9 of this chapter.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-8

Report of survey and plat; approval procedures; recording; legal effect of plat

Sec. 8. (a) When a plat is filed under section 7 of this chapter, the municipal clerk shall immediately give notice, in accordance with IC 5-3-1, that on a specified day, at an hour and place named in the notice, the municipal legislative body will meet to consider the land surveyor's report and plat, and to hear any objections to the report and plat by interested parties.

(b) If any errors or omissions are discovered, the legislative body shall require the surveyor to correct them. When the legislative body

has approved the report of the survey and plat, it shall give the plat an appropriate name and have it, together with the resolution of approval, recorded in the proper records in the county recorder's office. When recorded, the plat has the same legal effect as if it had been done by the owners of the tracts platted.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-9

Expenses of survey and plat; apportionment and assessment against property platted; lien; collection and disbursement

Sec. 9. (a) The expenses arising from a survey and plat in a municipality under this chapter shall be charged to the property platted, in the proportion the municipal legislative body considers just and equitable. When approving the land surveyor's report of the survey and plat, the legislative body shall, at the same time, assess an equitable part of the cost and expense against each tract platted.

(b) The assessment is a lien on the property from the time the assessment is made, and is due and payable as soon as the plat is recorded. If an assessment is not paid before the second day of January after it is made, a certified copy of the assessment shall be filed in the office of the auditor of the county in which the property is located, and the auditor shall place the amount claimed on the tax duplicate against the lands of the landowner. The amount shall be collected as taxes are collected, and, when collected, shall be disbursed to the general fund of the municipality.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-10

Vacation of plat by owners; written instrument; filing and approval; recording; land outside municipal boundaries excepted from approval; effect; public ways

Sec. 10. (a) The owners of land in a plat may vacate all or part of that plat. All the owners of land in the plat must declare the plat or part of the plat to be vacated in a written instrument, and that instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

(b) Before offering the instrument for recording under this section, an owner must file a copy of the instrument in the county auditor's office and must submit the instrument vacating the plat for the approval of the plan commission that has jurisdiction over the platted area under IC 36-7-4. If no plan commission has jurisdiction over the platted area under IC 36-7-4, the instrument must be submitted for the approval of:

- (1) the county executive, in the case of land located in an unincorporated area; or
- (2) the municipal works board, in the case of land located inside the corporate boundaries of a municipality.

(c) The county recorder may record the instrument only if a certificate showing the approval of the vacation by the plan commission, county executive, or municipal works board is attached to it. If the instrument is not executed and approved as required by this section, it is void.

(d) The owners of land in a plat that is located outside the corporate boundaries of any municipality may vacate all of the plat without the approval required by subsections (b) and (c) if no lots have been sold and no roads constructed in the plat, and all of the owners of land in the plat declare the plat to be vacated in a written instrument. The instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

(e) An instrument recorded under this section terminates the effect of the plat or part of the plat declared to be vacated, and it also terminates all public rights in the public ways and public places described in the plat or part of the plat. However, a public way that has been improved, or that is part of an improved plat, may be vacated only in accordance with section 12 of this chapter or with IC 36-7-4-712, whichever is applicable.

As added by Acts 1981, P.L.309, SEC.22. Amended by P.L.220-1986, SEC.5.

IC 36-7-3-11

Filing petition to vacate; contents of petition; hearing date; procedures for notice and hearing; approval, disapproval, or imposition of conditions

Sec. 11. (a) The owner of land in a plat may file with the plan commission that has jurisdiction over the platted area under IC 36-7-4 a petition to vacate all or part of the plat pertaining to the land owned by the petitioner.

(b) The petition must:

- (1) state the reasons for and circumstances prompting the request;
- (2) specifically describe the property in the plat proposed to be vacated; and
- (3) give the name and address of each owner of land in the plat.

The petition may include a request to vacate any recorded covenants or commitments filed as part of the plat. The covenants or commitments are then also subject to vacation.

(c) Within thirty (30) days after receipt of a petition for vacation of a plat, the plan commission staff shall announce the date for a hearing before the plan commission. The plan commission shall, by rule, prescribe procedures for setting hearing dates, mailing written notice to each owner of land in the plat, and providing such other notice as may be required in accordance with IC 36-7-4-706. The petitioner shall pay all expenses of providing the notice required by this subsection.

(d) The plan commission shall, by rule, prescribe procedures for the conduct of the hearing, which must include a provision giving each owner of land in the plat an opportunity to comment on the petition.

(e) The plan commission shall approve or deny the petition for vacation. The plan commission shall approve the petition for vacation of all or part of a plat only upon a determination that:

- (1) conditions in the platted area have changed so as to defeat the original purpose of the plat;
- (2) it is in the public interest to vacate all or part of the plat; and
- (3) the value of that part of the land in the plat not owned by the petitioner will not be diminished by vacation.

(f) If, after the hearing, the plan commission determines that the plat or part of the plat should be vacated, it shall make written findings and a decision approving the petition. The plan commission may impose reasonable conditions as part of its approval. The decision must be signed by an official designated in the subdivision control ordinance. The plan commission shall furnish a copy of its decision to the county recorder for recording.

(g) If, after the hearing, the plan commission disapproves the petition for vacation, it shall make written findings that set forth its reasons in a decision denying the petition and shall provide the petitioner with a copy. The decision must be signed by the official designated in the subdivision control ordinance.

(h) The approval, disapproval, or imposition of a condition on the approval of the vacation of all or part of a plat is a final decision of the plan commission. The petitioner or an aggrieved party may seek review of the decision of the plan commission as provided by IC 36-7-4-1016. *As added by Acts 1981, P.L.309, SEC.22. Amended by P.L.220-1986, SEC.6.*

IC 36-7-3-12

Vacation of public way or place; petition; notice; hearing; adoption of ordinance; appeals

Sec. 12. (a) Persons who:

- (1) own or are interested in any lots or parts of lots; and
- (2) want to vacate all or part of a public way or public place in or contiguous to those lots or parts of lots;

may file a petition for vacation with the legislative body of:

- (A) a municipality, if all or any part of the public way or public place to be vacated is located within the corporate boundaries of that municipality; or
- (B) the county, if all or the only part of the public way or public place to be vacated is located outside the corporate boundaries of a municipality.

(b) Notice of the petition must be given in the manner prescribed by subsection (c). The petition must:

- (1) state the circumstances of the case;
- (2) specifically describe the property proposed to be vacated; and
- (3) give the names and addresses of all owners of land that abuts the property proposed to be vacated.

(c) The legislative body shall hold a hearing on the petition within thirty (30) days after it is received. The clerk of the legislative body shall give notice of the petition and of the time and place of the hearing:

- (1) in the manner prescribed in IC 5-3-1; and
- (2) by certified mail to each owner of land that abuts the property proposed to be vacated.

The petitioner shall pay the expense of providing this notice.

(d) The hearing on the petition is subject to IC 5-14-1.5. At the hearing, any person aggrieved by the proposed vacation may object to it as provided by section 13 of this chapter.

(e) After the hearing on the petition, the legislative body may, by

ordinance, vacate the public way or public place. The clerk of the legislative body shall furnish a copy of each vacation ordinance to the county recorder for recording and to the county auditor.

(f) Within thirty (30) days after the adoption of a vacation ordinance, any aggrieved person may appeal the ordinance to the circuit court of the county. The court shall try the matter de novo and may award damages.

As added by Acts 1981, P.L.309, SEC.22. Amended by Acts 1981, P.L.46, SEC.6; Acts 1982, P.L.211, SEC.2.

IC 36-7-3-13

Vacation proceedings; filing of remonstrances and objections; grounds

Sec. 13. A remonstrance or objection permitted by section 11 or 12 of this chapter may be filed or raised by any person aggrieved by the proposed vacation, but only on one (1) or more of the following grounds:

- (1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.
- (2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.
- (3) The vacation would hinder the public's access to a church, school, or other public building or place.
- (4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

As added by Acts 1981, P.L.309, SEC.22. Amended by Acts 1981, P.L.46, SEC.7; Acts 1982, P.L.211, SEC.3; P.L.353-1983, SEC.1.

IC 36-7-3-14

Vacation of platted land; descriptions of lots and parcels in plat preserved; exceptions

Sec. 14. (a) If any platted land is vacated, the descriptions of the lots and parcels of that land shall be preserved as set forth in the plat, with the proportionate parts of vacated streets and alleys added as provided by law, unless all the owners of land in the vacated area consent in writing to the description of the area by:

- (1) the method used before the plat was made;
- (2) metes and bounds; or
- (3) other appropriate description.

(b) Notwithstanding subsection (a), a vacated tract of five (5) acres or more that is owned by one (1) person, or jointly by two (2) or more persons, need not be described by lot number and may be described by metes and bounds or some other method.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-15

Termination of vacation proceeding; limitation

Sec. 15. After the termination of a vacation proceeding under this chapter, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two (2) years.

As added by Acts 1981, P.L.309, SEC.22.

IC 36-7-3-16

Vacation of platted easements; public utility's use of public way or place notwithstanding vacation proceedings; waiver

Sec. 16. (a) Platted easements may be vacated in the same manner as public ways and public places, in accordance with section 12 of this chapter or with IC 36-7-4-712, whichever is applicable.

(b) Notwithstanding this article, vacation proceedings do not deprive a public utility of the use of all or part of a public way or public place to be vacated, if, at the time the proceedings are instituted, the utility is occupying and using all or part of that public way or public place for the location and operation of its facilities. However, the utility may waive its rights under this subsection by filing its written consent in the vacation proceedings.

As added by Acts 1981, P.L.309, SEC.22. Amended by P.L.220-1986, SEC.7.